

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
Asheville Division
Case No. 1:12-cv-388

WILLIAM N. DEVLIN and wife CARRI A.
LUCKSAVAGE,

Plaintiffs

v.

WELLS FARGO BANK, N.A.

Defendant.

MOTION TO DISMISS

Defendant Wells Fargo Bank, National Association (“Wells Fargo”) proceeding by and through undersigned counsel, moves pursuant to Rules 9 and 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7.1 for entry of an Order dismissing Plaintiffs’ Complaint with prejudice. As detailed in the Brief submitted contemporaneously with this Motion, Defendant respectfully submits that the Complaint should be dismissed because:

1. The claims are implausible on their face;
2. Plaintiffs were not damaged by the purported actions of Wells Fargo;
3. The claims are premised on the breach of a legal duty that does not exist
4. The claims are barred by the applicable statutes of limitations; and
5. The fraud and unfair trade practice claims are not plead with particularity.

WHEREFORE, Wells Fargo respectfully requests that the Court enter an Order dismissing Plaintiffs’ claims with prejudice and granting Wells Fargo such additional relief as the Court deems just and proper.

This the 3rd day of January, 2013.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

/s/ Kenneth B. Oettinger, Jr.

Kenneth B. Oettinger, Jr. (NC State Bar No. 20064)

Lee Williams (NC State Bar No. 35657)

301 South College Street, Suite 3500

Charlotte, NC 28202-6037

Telephone: (704) 331-4900

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2013, the foregoing “**Motion to Dismiss**” was served via the Court’s CM/ECF system as follows:

David R. Payne
David R. Payne, P.A.
1 North Pack Square, Suite 500
Asheville, NC 28801
dpayne@drplawfirm.com

Attorney for Plaintiffs

/s/ Kenneth B. Oettinger, Jr. _____
Kenneth B. Oettinger, Jr.